

FILED  
COURT OF APPEALS  
DIVISION II

NO. 46154-4-11

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IN THE COURT OF APPEALS  
STATE OF WASHINGTON  
FOR THE STATE OF WASHINGTON

DEPUTY

DIVISION II

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STATE OF WASHINGTON

WILLIAM HOLDNER, RANDAL HOLDNER  
AND HOLDNER FARMS WASHINGTON

APPELLANTS'

v.

PORT OF VANCOUVER, USA, A  
WASHINGTON MUNICIPAL CORPORATION

RESPONDENT

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ON APPEAL FROM THE SUPERIOR  
COURT OF CLARK COUNTY

BEFORE

THE HONORABLE BARBARA D. JOHNSON, JUDGE

THIRD AMENDED OPENING BRIEF OF APPELLANTS'

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## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	iii-v
A. ASSIGNMENTS OF ERROR	1
B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1-2
C. STATEMENT OF THE CASE	2-3
D. STATEMENT OF FACTS	3-5
E. ARGUMENT	5-8
E. CONCLUSION	8

## BRIEF OF APPELLANTS'

## TABLE OF AUTHORITIES

### A - TABLE OF CASES

WASHINGTON CASES	PAGE
State v. Alvarez-Albrego, 151 WN. 351, 366, 255 P. 3d 396 (2010).	1
Brin v. Stutzman, 89 WN. APP. 809, 826, 951 P.2d (1998).	1
Burmeister v. State Farm Ins. Co., 92 WN. APP. 359,367, 966 P. 2d 921 (1998).	1
Cascade Trailer Court v. Beeson, 50 WN. APP. 678, 684, 749 P. 2d 761 (1988).	1
Edmondson v. Popchoi, 155 WN. APP. 376, 386, 228 P.3d 780 (2010).	1
Ensley v. Mullman, 155 WN. APP. 744, 751, 230 P. 3d 599 (2010).	1
Fabrique v. Choice Hotels Intern. Inc., 144 WN. APP. 675, 683, 183 P.3d 118 (2008).	1
Holdner v. Port of Vancouver, USA, Clark County Supreme Court Case No. 06-2-04327-1 ("Case1") and 06-2-02694-6 (Case 2") (Consolidated, DKT. # 12, Case 1) Order, DKT # 52 Case 1; Affirmation on Appeal, DKT # 39, Case 2.	1
Kennewick Supply & Storage Co. v. Fry, 133 WN. 341, 343, 233 P. 658 (1925).	1
Kramerevcky v. DSHS, 122 WN. 2d 738, 743, 863 P. 2d 535 (1993)	1

	PAGE
Miller v. Arctic Alaska Fisheries Corp., 133 WN. 2d 250, 255-56, 944 P. 2d 1005 (1997).	1
Pelton v. Tri-State Mem’l Hosp., Inc. 66 WN. APP. 350, 354, 831 P. 2d 1147 (1992).	1
Robinson v. Seattle, 119 WN. 2d 34, 82, 830 P.2d 318 Cert. denied, 506 U.S. 1028, 113 S. CT.676 (1992).	1
Shah v. Allstate Ins. Co., 130 WN. APP. 74, 80, 121 P. 3d 1204 (2005).	1
Sherman v. Kissinger, 146 WN. APP. 855, 870-71, 195 P. 3d 539 (2008).	1
Warner v. Regent Assisted Living, 132 WN. APP. 126, 130, 135, P.3d 865 (2006).	1
Wick v. Tacoma Eastern R. Col, 40 WN. 408, 410-12, 82 P. 711 (1905).	1
OTHER AUTHORITIES:	
Fleming v. Goggins, 375 P. 2d 474 (Wyo., 1962).	1
Freeman v. Barrs, 237 S.W. 3d 285, 288 (S.D. 2007) In Relyon, 161 B.R. 1013, 1015 (D. Kansas 1993).	1
Galante v. Hathaway Bakeries, Inc. 176 N.Y.S. 2d 87, 92 (1958).	1
Heikes v. Farm Bureau Ins. Co. of Nebraska, 151 N.W. 2d 336 (Neb. 1967).	1

## B – STATUTES

		PAGE
REVISED CODE OF WASHINGTON		
RCW	5.44.040	1
RCW	59.18.310	1
RULES		
ER	201(a)	1
ER	403	1
ER	801	1
ER	802	1
ER	904	1
CR	30(e)	1

#### A. ASSIGNMENT OF ERROR

1. The Trial Court erred in granting Defendant's Motion for Summary Judgment when there are genuine issues of material facts in dispute.
2. The Trial Court erred in granting Summary Judgment based on inadmissible hearsay evidence.
3. The Trial Court erred in granting Summary Judgment when the Defendant-Port had a duty and obligation under a lease agreement to protect Appellants' personal property in an eviction proceeding.
4. The Trial Court erred in granting Summary Judgment when the Defendant-Port can be held liable for damages for failure to exercise reasonable and responsible care to protect Appellants' personal property in an eviction proceeding.
5. The Trial Court erred in granting the Defendant-Port Motion Summary Judgment when 45 day notice to Appellants' attorney to vacate the premises was ineffective. Appellants' were denied the opportunity to remove the personal property to comply with Notice to Vacate.

#### B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR:

1. Whether the Trial Court abused its discretion in granting Defendant-Port Motion for Summary Judgment. When there are genuine issues of material facts in dispute to be resolved by a finder of fact?

2. Whether the Trial Court abused its discretion in granting Defendant-Port Motion for Summary Judgment based on hearsay evidence?
3. Whether the Trial Court abused its discretion in granting Defendant-Port Motion for Summary Judgment when their own actions prevented the Appellants' from complying with 45 day eviction notice?
4. Whether the Trial Court abused its discretion in granting Defendant-Port Motion for Summary Judgment when it had a duty and responsibility in an eviction proceeding to protect the Appellants' personal property as a matter of law?
5. Whether the trial court abused its discretion when it ordered the withdrawal of Clark County Public Utilities records as evidence?

#### C. STATEMENT OF THE CASE

1. This is an appeal of Summary Judgment decision in The Superior Court of the State of Washington in the County of Clark, Case No. 06-2-02694-6, William Holdner, Randal William Holdner and Holdner Farms, Washington v. Port of Vancouver, USA, a Washington Municipal Corporation. CP 115, Pages 1-17; CP 118, Pages 1-14;
2. Appellants' in this action are NOT now contesting the termination of the lease agreement with the Port. This Court affirmed on appeal this issue in Holdner v. Port of Vancouver, USA, Clark County Superior Court Case No. 2-04327-1. CP 118, Page 1

3. The Lease Agreement provided that the Appellants' "shall be entitled to remove all or any improvements placed on said property by the lessee upon the termination of this lease or any extension thereof."

CP 115, Pages 1-3; CP 118, Pages 1-9; CP 119, Pages 1-5 plus vehicle certificate of title.

4. The Port's 45 day Notice to Appellants' attorney on November 10, 2006 to vacate the premises was ineffective. The mobile home was destroyed on November 13, 2006 and the silage was damaged and/or made unusable for cattle feed between November 30, 2006 and December 3, 2006. The Port's actions prevented the Appellants' from complying with the Notice to Vacate and timely removal of the personal property from the premises a violation of its rights under the lease agreement. CP 118, Page 8; CP 125, Page 1

#### D. STATEMENT OF FACTS

1. On November 26, 1997 the Appellants' William Holdner and Randal W. Holdner, dba Holdner Farms entered into lease agreement with the Port of Vancouver for a period of 10 years with ten (1) year options. CP 115, Pages 1-2; CP 118, Pages 1, 7

2. The agreement provide for termination by the Port as follows: It is understood and agreed that This lease may be terminated by the Port at any time. If the Port needs said premises to carry on its industrial development or other activities. (b) The Port shall give at lease (90) days written notice to the lessee of intention to terminate said lease and in addition, shall give the lessee an opportunity to remove all of its growing crops or in lieu thereof, the Port shall pay the lessee the



2. Cont'd

value of said crops which cannot be harvested by reason of the early termination of said lease. CP 115, Pages 1-4; CP 125, Pages 2-3

3. On May 12, 2006, pursuant to Section 15 of the lease , the Port provided notice to Appellants' stating the Port intended to terminate the lease in 90 days. CP 115, Pages 2-5

4. Before the Port filed Notice of Intent to seek an early termination the Appellants' had already planted the Sedan grass crop. CP 115, Pages 1-3; CP 118, Page 10

5. Up to and immediately before the eviction proceedings began on November 1, 2006 the Appellant William Holdner was having ongoing discussions with the Port's attorney, Brad Anderson. Mr. Anderson stated that the Port was liable under early termination clause for the value of the harvested Sudan grass. Mr. Anderson led William Holdner to believe the Port wanted the Appellants'- Lessee to stay on the premises until the crop harvested in the pit was fed out to the cattle to minimize the amount of the claim. The Port was insisting on a two week notice of removal of the cattle off the premises. Appellants' believed this constituted a practical impossibility to relocate 500 head of cattle with this short notice during the winter months. CP 118, Pages 10-13; CP 119, Pages 3-5

6. On November 9, 2006 the Port filed a 30 day Notice of Eviction. CP 115, Pages 3-4

7. The Port entered the property on November 9, 2006 at 8603 Lower River Road and began a demolition of the premises. CP 115, Page 3; CP 119, Pages 1-3

8. The Appellants' had a mobile home which was owned and titled in the name of Holdner Farms and located at 8603 Lower River Road, Vancouver, Washington. As a result of the demolition without Appellants' consent or approval the mobile home was destroyed. CP 118, Pages 2-3; CP 119, Pages 1-3

9. The Port on November 10, 2006 filed the 45 day Notice to Vacate the premises. CP 118, Page 7

10. The Port on November 30, 2006 evicted the Appellants' tenant at 8612 Lower River Road and turned off the power. The electricity also provided the electric power to the manure pump and well water pump for water for the cattle. CP 115, Pages 1-6; CP 119, Page 4

11. Without the Appellants' consent or knowledge the electric power was terminated by the Port to the premises. The harvested Sedan grass became contaminated and unusable for feed for the cattle. CP 115, Pages 1-6; CP 118, Pages 12-13, CP 119, Page 4; CP 124, Pages 1-4

12. The Appellants' have not asserted a claim for damages of the un-harvested crop because it was Appellants' practice to provide some feed for the wild life geese and cranes that frequent the leased property during the fall and winter months. CP 118, Page 13; CP 125, Page 2

#### E. ARGUMENT

1. The Defendant argues that a delay in bringing this to court entitles Summary Judgment. Appellants' have recognized the importance and its responsibility to

1. Cont'd

move this case forward. Numerous requests were made in this regard to my attorney but his personal issues appeared to be the stumbling block to accepting his professional legal responsibility.

2. The Defendant argues that on August 15, 2006, after the 90 day notice of the termination lease had no Contractual obligation to preserve the mobile home or the silage. Mr. Brad Anderson as the then attorney for the Port in an early termination of the lease, under the lease agreement recognized the Port's responsibility to the Appellants' for the value of the crop that had been planted on the premises. To minimize the amount of the claim he believed it was in the best interest of the Port to harvest the crop and have it fed out to the cattle under an interim extension of the terminated lease. Appellants' believed it would need all the 500 head of cattle to feed out the silage and empty the pit. The Port's insistence on a two week notice for removal of the cattle appeared to the Appellants' to be a practical impossibility during the winter months.

#### DESTRUCTION OF MOBILE HOME

3. Mr. Coleman testified under oath in a deposition that when mobile home was destroyed he believed it was owned by the Port. If the Port owned the mobile home it would not be necessary for the sheriff to have an opinion of its condition or value. The court's reliance on the sheriff's inadmissible hearsay evidence regarding mobile home is a disputable material fact.

## DAMAGE TO THE SILAGE ON THE PREMISES

1. The Port's contention that the electric power for the pump was connected at the home located on 8618 Lower River Road, is a disputable fact.
2. Mr. Rybaya was a sub-tenant who lived on this property and had no involvement with the farm operations. He was allowed to live on the property until December 31, 2006 with the Port's permission.
3. As to whether he was delinquent in paying his Clark County Public Utility bill had nothing to do with Holdner Farms operation. The power to that house at 8618 Lower River Road was on a separate meter independent of the Holdner Farms operation.
4. The eviction of James Freeman from 8612 Lower River Road and turning off the power on November 30, 2006 was the cause of silage in the pit being damaged. The Port's assertion that the Clark County Public Utility decision to disconnect the power involved a decision by the utility for lack of payment at the 8618 instead of 8612 residence is a disputable fact.
5. Appellant, William Holdner called the Clark County Public Utility on December 3, 2006 and spoke with Jason Hutcheson requesting the power be turned back on because of the lack of water for the cattle. In the telephone conversation with Mr. Hutcheson he stated he was instructed by Todd Coleman and Linda Carlson to turn off the power to 8612 residence and that he had to call for permission to turn it back on.

6. (Cont'd)

The Clark Public Utilities records that were withdrawn further substantiated the Appellants' evidence that Defendant-Port actions caused the damage from the silage becoming contaminated in the Pit and unusable for cattle feed.


7. The Appellants' believe their attorney, Mr. Boothe's refusal or failure to pursue the court proceedings in a timely and bonafide manner may have caused the court to become prejudiced in the granting of the Defendant-Port Motion for Summary Judgment.

F. CONCLUSION

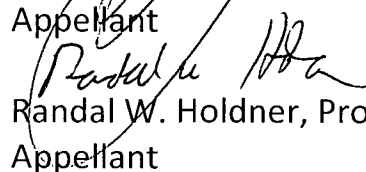
The Port's actions arising from and during the eviction proceedings under the lease agreement had a duty and was required as a matter of law to protect the Appellants' personal property. The Appellants' have credible evidence and testimony to support that there are genuine issues of material facts in dispute to be resolved by a finder of fact.

For all the foregoing reasons, Appellants' respectfully requests that this Court reverse the summary judgment and remand back to Clark County Superior Court for further proceedings.

Dated August 12, 2014



William F. Holdner, Pro Se  
Appellant



Randal W. Holdner, Pro Se  
Appellant

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CERTIFICATE OF SERVICE

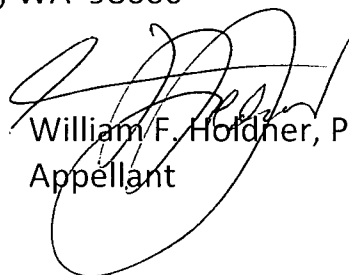
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STATE OF WASHINGTON

I hereby certify that on August 12, 2014, I served the foregoing Third Amended Opening Brief of Appellants' on the following individual by mailing to said individual a true copy thereof, addressed to their known address and deposited in the post office at Portland, Oregon

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Dated August 12, 2014